

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

TYSHAUN T. SMITH,

Defendant.

Case No. 20-CR-93-JPS

ORDER

On June 16, 2020, the grand jury returned a two-count indictment charging Defendant with vandalism-related conduct in violation of 18 U.S.C. § 844(i) and 26 U.S.C. §§ 5861(c), 5822, 5845, 5871. (Docket #1). On February 2, 2021, the parties filed a plea agreement indicating that Defendant agreed to plead guilty to the second count in the Indictment, i.e., possession of a “Molotov cocktail,” in violation of 26 U.S.C. § 5861(c), 5822, 5845, and 5871. (Docket #21). That same day, the Government filed a motion to seal the plea agreement pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), which permits the Government to agree, as part of the plea agreement, to a specific sentence that would “bind[] the Court once the Court accepts the plea agreement.” (Docket #22).¹ The plea agreement indicated that the parties agreed to a term of imprisonment of three years. (Docket #21 at 6). Because the parties reached the plea agreement pursuant to Rule 11(c)(1)(C), they also sought a pre-plea sentencing report, which the Probation Office filed on August 9, 2021. (Docket #27).

¹Such a motion would protect the confidentiality of the plea negotiations in the event that the Court had declined to accept the plea.

The parties appeared before Magistrate Judge Nancy Joseph on September 22, 2021 to conduct a plea colloquy pursuant to Federal Rule of Criminal Procedure 11. (Docket #33). Defendant entered a plea of guilty as to Count Two of the Indictment. (Docket #34 at 1). After cautioning and examining Defendant under oath concerning each of the subjects mentioned in Rule 11, Magistrate Judge Joseph determined that the guilty plea was knowing and voluntary, and that the offense charged was supported by an independent factual basis containing each of the essential elements of the offense. *Id.*

Magistrate Judge Joseph filed a Report and Recommendation with this Court, recommending that: (1) Defendant's plea of guilty be accepted; (2) a presentence investigation report be prepared; and (3) Defendant be adjudicated guilty and have a sentence imposed accordingly. *Id.* Pursuant to General Local Rule 72(c), 28 U.S.C. § 636(b)(1)(B), and Federal Rule of Criminal Procedure 59(b), the parties were advised that written objections to that recommendation, or any part thereof, could be filed within fourteen days of the date of service of the recommendation. *Id.* at 2. To date, no party has filed such an objection. The Court has considered Magistrate Judge Joseph's recommendation and, having received no objection thereto, will adopt it. Additionally, because the Court has adopted the plea agreement and there is no longer an interest in preserving the confidentiality of the plea negotiations, the parties' motion to seal (Docket #22) will be denied as moot and the seal on various docket entries in this case will be lifted.

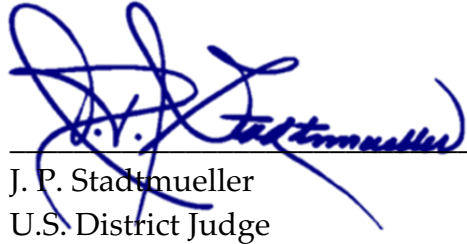
Accordingly,

IT IS ORDERED that the Government's motion to seal (Docket #22) be and the same is hereby **DENIED as moot**, the Clerk of Court is directed to unseal the plea-related docket entries in this case; and

IT IS FURTHER ORDERED that Magistrate Judge Nancy Joseph's Report and Recommendation (Docket #34) be and the same is hereby **ADOPTED**.

Dated at Milwaukee, Wisconsin, this 18th day of October 2021.

BY THE COURT:



J. P. Stadtmueller
U.S. District Judge